

CHARLES Y. NEFF

IBLA 81-794

Decided May 27, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W 72885.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with other parties in interest, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to commencement of the filing period.

3. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: James D. Voorhees, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Charles Y. Neff appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 28, 1981, rejecting his simultaneous oil and gas lease application filed in the September 1980 drawing. His application was drawn with first priority for parcel WY-6070. BLM rejected his application because (1) questions (d), (e), and (f) on the application had not been answered, and, therefore, it had not been fully completed as required by 43 CFR 3112.2-1; and because (2) the July 18, 1980, date on the application did not reflect that the application was signed within the September 1 through September 22, 1980, filing period as required by 43 CFR 3112.2-1(c).

On appeal, appellant asserts that BLM's decision should be reversed for the following reasons:

(1) The applicable regulations do not require Charles Y. Neff to check the boxes labelled (d), (e) and (f);

(2) The requirement that the card be signed and dated during the filing period has not been consistently enforced by the BLM making such enforcement against Charles Y. Neff arbitrary, capricious and an abuse of discretion; and

(3) There was no notice given by the BLM that a failure to properly sign and date the application card would result in the rejection of such card.

[1] We find that the applicable regulations do require the applicant to check the boxes labeled (d), (e), and (f).

43 CFR 3112.2 and 3112.2-1, state in part:

§ 3112.2 How to file an application.

§ 3112.2-1 Simultaneous oil and gas lease applications.

(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. [Emphasis added.]

The application form clearly contemplated that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)" (italics in original). Small boxes appear following each item to be checked in response.

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and

deal particularly with the circumstances of the execution of the application. The questions relate directly to the qualifications of the applicant to receive a lease. The failure to disclose a party in interest to the lease offer (question (d)) is a violation of the regulation at 43 CFR 3102.2-7; the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3; and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c). Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for lands not within a known geological structure of a producing oil or gas field, he is required by statute, 30 U.S.C. § 226 (1976), to issue the lease to the first qualified applicant therefor. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. Bonita L. Ferguson, 61 IBLA 178 (1982).

Appellant contends that 43 CFR 3102.2-7 as it relates to question (d) requires an affirmative act by the applicant only in the event other parties own or hold an interest in the application. Therefore, appellant reasons that since he is the sole interest holder in the application, his failure to indicate that there are no other parties in interest should not prove fatal to his application. Likewise, appellant asserts that 43 CFR 3112.4-3, as it relates to question (e) does not expressly require the applicant to indicate on the application form the existence of an assignment proscribed by the regulation; and that 43 CFR 3112.2-1(f), as it relates to question (f), does not require the applicant to indicate on the form any interest he may have in more than one application for the same parcel. We do not agree with appellant's interpretation of the regulations, as they apply to simultaneous lease application cards. Contrary to appellant's contentions, the applicable regulations clearly require rejection of this application. One regulation, 43 CFR 3112.2-1(a), requires that an application be "completed, signed and filed pursuant to the regulations in this subpart." (Emphasis added.) Another regulation, 43 CFR 3112.6-1(a), provides that any application not filed in accordance with section 3112.2 shall be rejected. This Board has consistently held that an oil and gas lease application is not completed in accordance with 43 CFR 3112.2-1 or the explicit instructions on the application itself where questions (d) through (f) are left unanswered. William H. Burruss, 62 IBLA 40 (1982); Terry K. Weed, 61 IBLA 213 (1982); Clyde K. Kobbeman, 58 IBLA 268, 88 I.D. 915 (1981).

The case cited by appellant, Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), does not require a different result. In Brick, the court held that the Department may not reject a drawing entry card (now a simultaneous oil and gas lease application form) for failure to enter the offeror's name in the proper order indicated by the instructions on the card -- last name, first name, middle initial -- where the Department's regulations do not specify the precise manner in which cards must be completed and where the Secretary has not applied such a rule consistently.

This case is not similar to Brick, which involved a question of the precise manner in which an application must be completed. Rather, this case involves a question of the completion of an application. 43 CFR 3112.2-1(a) states that an application consists of a "completed" approved application form. This language provides ample notice of this requirement. Failure to complete an application by omitting the answers to questions (d) through (f) is simply not compliance. ^{1/}

[2] Appellant contends that the requirement that the application be signed and dated during the filing period has not been consistently applied by BLM, making such enforcement against appellant arbitrary, capricious, and an abuse of discretion.

The regulation, 43 CFR 3112.2-1(c), states in part, "The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period."

Further, 43 CFR 3112.2-1(g) states, "The properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management."

It is well established that a drawing entry card which is not properly dated in the space provided on the card must be rejected. Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978), aff'g Walter M. Sorensen, 32 IBLA 345 (1977). Because appellant's application was dated prior to the filing period, the offer must be rejected. Leonard Thompson, 62 IBLA 236 (1982); Herbert W. Winston, 61 IBLA 199 (1982). Strict compliance with the regulations governing the drawing, 43 CFR Subpart 3112, is enforced to protect the rights of the second and third drawn qualified offerors. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, 544 F.2d 1067 (10th Cir. 1976). This regulation has been applied consistently since the current controlling regulation, 43 CFR 3112.2-1(c), became effective on June 16, 1980. 45 FR 35156 (May 23, 1980).

[3] Appellant's contention that there was no notice given by BLM that a failure to properly sign and date the application would result in the rejection of such offer is without merit. Appellant, as a person dealing with the Government, is presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. §§ 1507, 1510 (1976). Such regulations have the force and effect of law and are binding on the Department. Dr. Jose Trabal, 60 IBLA 97 (1981); Bernard P. Gencorelli, 43 IBLA 7 (1979). Thus, the clear directives

^{1/} The court in Brick itself distinguished those cases where information was omitted from drawing entry cards when it stated that the phrase "signed and fully executed," which appeared in 43 CFR 3112.2-1(a) (1979), and is similar to "completed, signed and filed" contained in the present version of 43 CFR 3112.2-1(a), "may be reasonably construed as requiring responses to all information blanks on the entry card, as IBLA decisions have done * * *." Id. at 216 n.8.

of a regulation cannot be disregarded on the basis of appellant's allegation that such a regulation may have been inconsistently applied by BLM. See Trans-Texas Energy, Inc., 56 IBLA 295 (1981). Appellant was on notice and should have been aware of the regulatory requirements published in the Federal Register on May 23, 1980. Dr. Jose Trabal, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

